



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR District Counsel

North Texas District, Dallas

CC:MSR:NTX:DAL

FROM: Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT: Eligible Access Expenditures

This Field Service Advice responds to your memorandum dated December 22, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

Taxpayer	=
Year 1	=
Year 2	=
Amount 1	= \$
Amount 2	= \$
Machine A	=
Machine B	=

ISSUE

Whether any portion of the amounts expended to acquire two dental x-ray machines purchased by a family practice dentist are eligible for the disabled access credit under section 44 of the Internal Revenue Code.

CONCLUSION

The disabled access credit is not available for any portion of the amounts expended to acquire these two x-ray machines. The expenditures to acquire the machines do not qualify as “eligible access expenditures” because the machines were not purchased by the dentist to comply with any requirement of the Americans with Disabilities Act.

FACTS

Taxpayer is a dentist who started a sole practice in Year 1. The practice was a family practice. We do not know the exact number of taxpayer’s patients who were disabled or the nature of their disabilities, only that they were not more than a usual number.

Originally, the taxpayer worked in other dental offices as an independent contractor and used standard dental x-ray machines, the kind that take postage stamp size pictures while the film is in the patient’s mouth. Taxpayer purchased two x-ray machines and claimed the § 44 credit when taxpayer commenced an independent practice of dentistry in Year 2. These two new machines have different functions than a standard x-ray machine.

Machine A rotates around the patient’s head taking a panoramic view of all the patient’s teeth. The x-ray picture it produces is cheaper than a full mouth series produced by a standard machine.

Machine B creates a cephalogram, an x-ray of the patient’s entire head. It allows the petitioner to determine if the patient has problems with his jaw structure or the positioning of his teeth. The brochure describing this machine stresses that it can be used by all patients. The brochure states that the machine “makes total oral diagnostics practical and comfortable for all patients – standing, seated, or in a wheelchair – without changes to the unit or optional accessories.”

The taxpayer has stated that the primary consideration in purchasing these particular x-ray machines was their price. Some other machines that take these kinds of pictures are considerably more expensive.

These two machines cost a total of Amount 1. The taxpayer claimed half that amount as a disabled access credit allowable under section 44 of the Code. The Service denied that credit, but the net adjustment to income was only Amount 2 due to an offsetting increase in allowable depreciation on the machines.

THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act of 1990 (the ADA), Public Law 101-336, is a national mandate for the elimination of discrimination against individuals with disabilities. Section 302(a) of the ADA provides that no individual may be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, and facilities of any place of public accommodation. Section 301(7)(F) of the ADA defines “public accommodation” to include the professional offices of health care providers.

“Discrimination” is defined in section 302(b)(2)(A) of the ADA to include a failure to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford goods, facilities, or accommodations to individuals with disabilities. This section also provides that discrimination includes the failure to take steps necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service or accommodation being offered or would otherwise result in an undue burden.

THE DISABLED ACCESS CREDIT

The disabled access credit was enacted as section 44 of the Internal Revenue Code by section 11611 of the Budget Reconciliation Act of 1990. It was intended to assist eligible small businesses to comply with the applicable requirements of the ADA. See Conference Report, Rept. No. 101-964, 101st Cong. 2nd Sess., 1139 (October 26, 1990). The general rule allows eligible small businesses to claim a credit equal to 50 percent of “eligible access expenditures” in excess of \$250 but not to exceed \$10,250. Therefore, the maximum allowable credit in any year is \$5,000.

“Eligible access expenditures” are defined in section 44(c)(1) as, “amounts paid or incurred by an eligible small business for the purpose of enabling such small business to comply with applicable requirements under the Americans with Disabilities Act of 1990.”¹ In other words, as the Conference Report confirms, “eligible access expenditures” are expenditures required by the ADA. Therefore,

¹ Whether Taxpayer is an “eligible small business” is outside the scope of this advice. However, businesses with gross annual receipts of no more than \$1 million or having no more than 30 employees are “eligible small businesses.” Therefore, for purposes of this advice, we assume Taxpayer falls within this definition.

expenditures not required by the ADA, even those with some perceived benefit for the disabled, are not eligible for the credit.

Section 44(c)(2) provides that “eligible access expenditures” include amounts paid or incurred:

(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

(B) to provide qualified interpreters or other effective methods of making aurally delivered material available to individuals with visual impairments,

(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered material available to individuals with visual impairments,

(D) to acquire or modify equipment or devices for individuals with disabilities, or

(E) to provide other similar services, modifications, materials, or equipment.

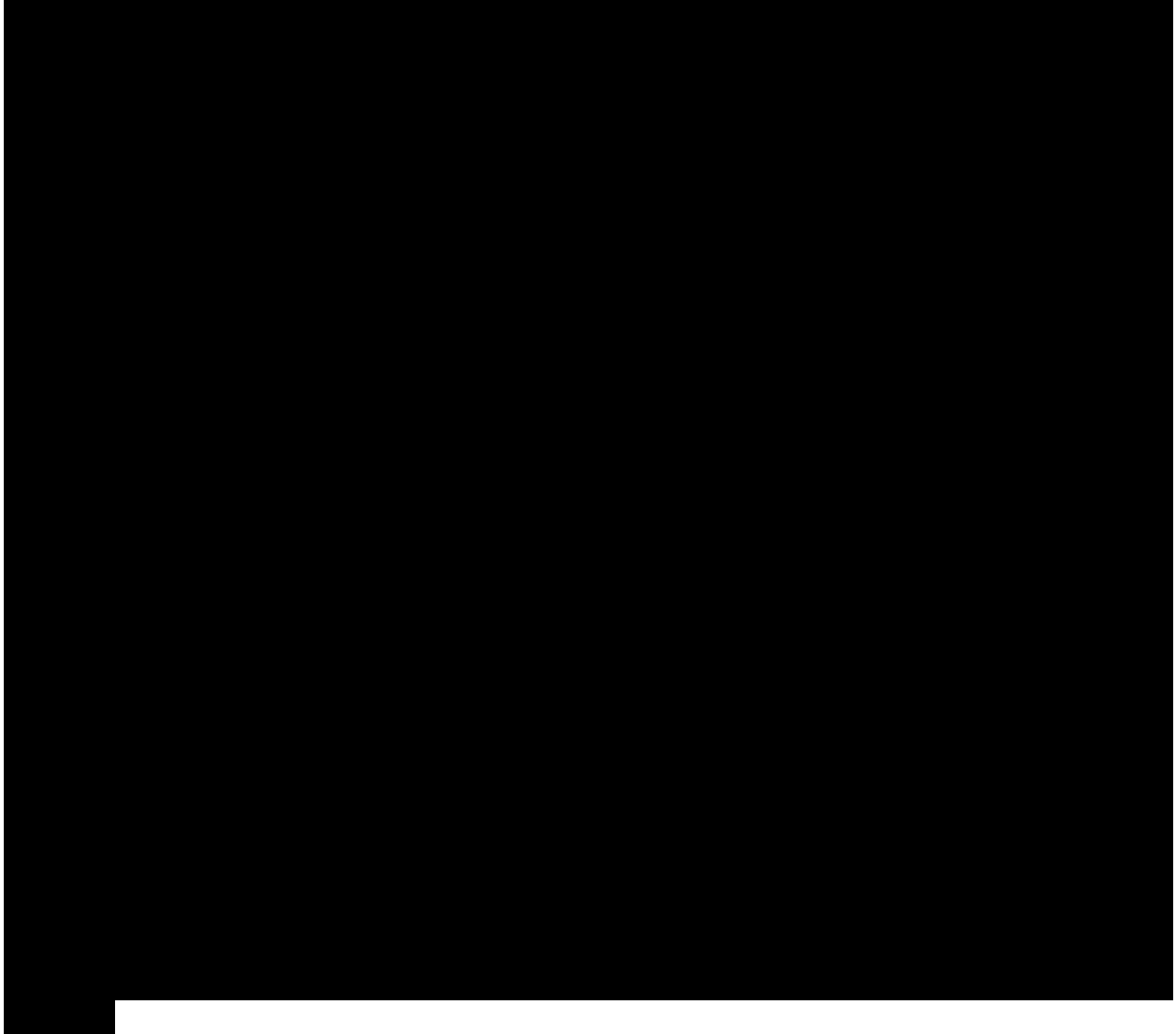
Section 44 (c) (3) provides that “eligible access expenditures” includes only expenditures which are reasonable . Expenditures that are unnecessary to accomplish the purposes in section 44(c)(2) are not included.

DISCUSSION

There is no indication that taxpayer was required by the ADA to purchase the two x-ray machines in issue. Moreover, the machines are not designed to address a particular concern of the disabled, but have general usefulness in serving all patients, whether or not they are disabled. The primary benefit of the machines is to taxpayer’s sole family dental practice. The machines provide x-ray pictures that would not otherwise be available through other types of x-ray equipment or would be available only with more effort and at increased cost using a standard dental x-ray machine. Any benefit to disabled patients is ancillary to the primary purpose of assisting in the practice of family dentistry.

Indeed, there is no reason to believe the machines benefit disabled patients. Presumably, all patients sit in the dental chair for other aspects of their diagnosis and treatment. If so, then having their x-rays taken while they remain in their wheelchair would not be of any benefit.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



If you have any further questions, please call.

By: _____
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